

Richard E. Bowes

09/21/2005

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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTSTRANS-SPEC TRUCK SERVICE,
INC., d/b/a TRUCK SERVICE,

Plaintiff,

vs.

CATERPILLAR, INC.,

Defendant.

**CERTIFIED ORIGINAL
LEGALINK BOSTON**CIVIL ACTION NO.
04-11836-RCL

THE DEPOSITION of RICHARD E. BOWES, called for examination pursuant to the provisions of the United States District Court for the Central District of Illinois and Rules of the Illinois Supreme Court as they apply to the taking of depositions, taken before Kathy L. Johnson, C.S.R., a Notary Public in and for the County of Henry, State of Illinois, on the 21st day of September, 2005, at the hour of 9:30 a.m., at the Radisson Hotel, Pembroke Room, 117 N. Western Avenue, Peoria, Illinois.

Richard E. Bowes

09/21/2005

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(Witness sworn.)

MR. SAMITO: The witness is going to read and sign the transcript under the pains and penalties of perjury, but notarization of the signature is waived.

Objections except as to the form of the question are reserved until the time of trial. Motions to strike are reserved until the time of trial.

And I'd also like to stipulate for the record that Mr. Bowes is here as Caterpillar's Rule 30(b)6 designee to respond pursuant to Caterpillar Inc's. Response to Rule 30(b)6 notice of taking deposition dated August 30th, 2005, except as to paragraphs 10, 33, 34, 35, and 36, for which I understand that Clarissa, C-L-A-R-I-S-S-A, Colmer, C-O-L-M-E-R, is going to testify tomorrow.

MR. GRUNERT: Let me just go through those paragraphs again that are beyond what Mr. Bowes is here for.

MR. SAMITO: Sure.

Richard E. Bowes

09/21/2005

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1 MR. GRUNERT: You started with
2 number 17.

3 MR. SAMITO: 10, 33. He's also
4 not going to testify to topic 11.

5 MR. SAMITO: Well, I'm saying
6 that he's going to testify to the extent
7 indicated in Caterpillar's response except for
8 paragraphs 10, 33, 34, 35, 36, which are the
9 five listed in your September 7th e-mail that
10 Clarissa is going to --

11 MR. GRUNERT: Topic 11. Maybe I
12 omitted topic 11 with, of a witness identifying
13 the warranties that were given with respect to
14 these engines, that's going to be Clarissa as
15 well.

16 MR. SAMITO: Oh. Topic 11 is
17 Clarissa as well?

18 MR. GRUNERT: Yeah.

19 MR. SAMITO: Okay. That's no
20 problem.

21 MR. GRUNERT: Otherwise that's
22 accurate.

23 MR. SAMITO: Okay.

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO.04-11836-RCL

TRANS-SPEC TRUCK SERVICE, INC.)
d/b/a TRUCK SERVICE,)
Plaintiff)

vs.)

CATERPILLAR INC.)
Defendant)

NOTICE OF TAKING DEPOSITION

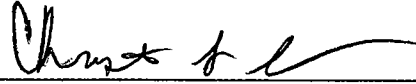
To: John A. K. Grunert, Esq.
Campbell Campbell Edwards & Conroy, P.C.
One Constitution Plaza
Boston, MA 02129

Please take notice that on ***September 13, 2005, at 10:00 a.m.***, at the offices of Donovan Hatem LLP, Two Seaport Lane, Boston, Massachusetts 02210, the plaintiff, Trans-Spec Truck Service, Inc., in this action by its attorneys, will take the deposition upon oral examination of the defendant, Caterpillar, Inc., by one or more persons to be designated by the defendant pursuant to Fed. R. Civ. P. 30(b)(6). The deposition will be recorded stenographically and will continue from day to day until completed. The designee or designees should be prepared to testify on the topics listed in Schedule A, attached hereto. Pursuant to Fed. R. Civ. P. 30(b)(5), the defendant is also required to produce the documents listed in Schedule B, attached hereto, on or before August 29, 2005.

You are invited to attend the deposition and cross-examine the witness in accordance with applicable law.

TRANS-SPEC TRUCK SERVICE, INC.
d/b/a TRUCK SERVICE

By its Attorneys,



Nancy M. Reimer, Esq., BBO#555373
Christian G. Samito, Esq., BBO#639825
Donovan Hatem LLP
Two Seaport Lane
Boston, MA 02210
(617) 406-4500

Date: July 29, 2005

CERTIFICATE OF SERVICE

I, Christian G. Samito, hereby certify that on this 29th day of July, 2005, I served a copy of the foregoing document by facsimile and first class mail, postage prepaid to:

John A.K. Grunert, Esq.
Kevin Guichon, Esq.
Campbell Campbell Edwards & Conroy
One Constitution Plaza, 3rd Floor
Boston, MA 02129



Christian G. Samito

SCHEDULE A

The following terms used in this Schedule A have the following meanings:

1. The term “communication” is defined pursuant to Local Rule 26.5(C)(1) as “the transmittal of information (in the form of facts, ideas, inquiries, or otherwise).”
2. The term “concerning” is defined pursuant to Local Rule 26.5(C)(7) as “referring to, describing, evidencing, or constituting.”
3. The term “document” is defined pursuant to Local Rule 26.5(C)(2) as “writings, drawings, graphs, charts, photographs, phonorecords, and other data compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form[.]”
4. The phrase “Trans-Spec’s C-12 Engines” refers to the twenty-two Caterpillar C-12 engines at issue in this lawsuit and which have the following Engine Numbers: 2KS27780; 2KS27897; 2KS27878; 2KS27936; 2KS27904; 2KS27955; 2KS28378; 2KS27844; 2KS27905; 2KS27999; 2KS27877; 2KS28368; 2KS27861; 2KS27956; 2KS27857; 2KS28276; 2KS27914; 2KS27953; 2KS27893; 2KS27931; 2KS27835; 2KS27791.
5. The phrase “Trans-Spec’s Trucks” refers to the twenty-two trucks containing Caterpillar C-12 engines with the Engine Numbers given in the preceding paragraph.
6. The term “Trans-Spec” shall mean Trans-Spec Truck Service, Inc. d/b/a Truck Service and/or its agents, employees, officers and all other persons acting on its behalf.
7. The term “Caterpillar” shall mean Caterpillar, Inc. and/or its agents, employees, officers and all other persons acting on its behalf.
8. The term “SMI” shall mean Milton Cat f/k/a Southworth-Milton, Inc. and/or its agents, employees, officers and all other persons acting on its behalf.

9. The term "Sterling" shall mean Sterling Truck Corporation and/or its agents, employees, officers and all other persons acting on its behalf.

MATTERS ON WHICH EXAMINATION IS REQUESTED

Examination is requested on the following matters:

1. All communications between SMI and Caterpillar concerning Trans-Spec's Trucks and Trans-Spec's C-12 Engines.
2. All communications between SMI and Caterpillar concerning flywheel house and/or flywheel house bolt failures on the Caterpillar C-12 model engine.
3. All communications between Sterling and Caterpillar concerning Trans-Spec's Trucks and Trans-Spec's C-12 Engines.
4. All communications between Sterling and Caterpillar concerning flywheel house and/or flywheel house bolt failures on the Caterpillar C-12 model engine.
5. The manufacturing of Trans-Spec's C-12 Engines.
6. The design of Trans-Spec's Trucks.
7. The procedure for installing Trans-Spec's C-12 Engines in Trans-Spec's Trucks.
8. The design, capabilities, appropriate applications, and performance specifications of Caterpillar's 3176, C-10, and C-12 engine models.
9. The design of the flywheel houses and flywheel house bolts in Caterpillar's 3176, C-10, and C-12 engine models.
10. The facts supporting any claim by Caterpillar that Trans-Spec failed to provide timely notice of the breaches of warranty and/or that Caterpillar has been prejudiced by such alleged failure.
11. The facts supporting any claim by Caterpillar that its breaches of implied warranties were part of a valid disclaimer by Caterpillar.
12. The facts supporting any claim by Caterpillar that it disclaimed all warranties, express or implied, in connection with Trans-Spec's trucks and/or Trans-Spec's C-12 Engines.
13. The facts supporting any claim by Caterpillar that Trans-Spec's damages were due to misuse of Trans-Spec's C-12 Engines and/or Trans-Spec's Trucks.

14. The facts supporting any claim by Caterpillar that Trans-Spec's losses were caused by the intervening, superseding misconduct of persons or the acts or omissions of third persons over whom Caterpillar exercised no control and for whose conduct Caterpillar is not responsible.
15. The facts supporting any claim by Caterpillar that Trans-Spec's conduct was the sole proximate cause of its damages.
16. The facts supporting any claim by Caterpillar that Trans-Spec failed to mitigate its injuries and damages.
17. The facts supporting any claim by Caterpillar that Trans-Spec's C-12 Engines met or exceeded all applicable warranties.
18. The facts supporting any claim by Caterpillar that Trans-Spec's C-12 Engines were not suited for the characteristics of Trans-Spec's trucks or Trans-Spec's use of Trans-Spec's trucks.
19. The failures of Trans-Spec's C-12 Engines.
20. The causes of the failures of the flywheel houses and flywheel house bolts installed in Trans-Spec's C-12 Engines.
21. Any investigation by Caterpillar into the causes of the failures of the flywheel houses and flywheel house bolts installed in Trans-Spec's C-12 Engines.
22. Any investigation by Caterpillar into the causes of failures of flywheel houses and flywheel house bolts in Caterpillar C-12 model engines.
23. Any complaints received by Caterpillar from any person or entity concerning failures of flywheel houses and flywheel house bolts in C-12 model engines.
24. Any differences between the design, composition, and/or manufacture of flywheel houses and/or flywheel house bolts installed in Caterpillar C-12 model engines installed in military vehicle applications and commercial vehicle applications.
25. The bolted connections of flywheel houses in Caterpillar C-12 model engines.
26. The bolt structure and placement on flywheel houses in Caterpillar C-12 model engines.
27. The expected loads placed on flywheel houses in Caterpillar C-12 engines.
28. The material used in the construction of flywheel houses and flywheel house bolts in the Caterpillar C-12 model engine.

29. The circumstances in which the flywheel houses and flywheel house bolts on Caterpillar C-12 model engines are cast or fabricated of the same metal.
30. Any modifications in the composition of the flywheel houses and flywheel house bolts installed in Caterpillar C-12 model engines since January 1, 1996.
31. Any revisions, changes or modifications of any kind in the design of the flywheel houses or flywheel house bolts used in Caterpillar C-12 model engines since January 1, 1996.
32. The impact or effect of transmissions and transmission mounts on the Caterpillar C-12 model engines, including but limited to the impact or effect on flywheel houses and flywheel house bolts.
33. Caterpillar's rejection of warranty claims made by Trans-Spec and any entity performing repairs on Trans-Spec's Trucks and/or Trans-Spec's C-12 Engines.
34. Caterpillar's handling of all warranty claims made by Trans-Spec and any entity performing repairs on Trans-Spec's Trucks and Trans-Spec's C-12 Engines.
35. Any decisions made by Caterpillar's Warranty Claims department concerning Trans-Spec's Trucks and/or Trans-Spec's C-12 Engines.
36. Any decisions made by Clarissa Colmer, Robert Smith, and Michael Powers concerning Trans-Spec's Trucks, Trans-Spec's C-12 Engines, and any request for warranty coverage or reimbursement for Trans-Spec's Trucks and Trans-Spec's C-12 Engines.
37. Any tests performed on Trans-Spec's Trucks and Trans-Spec's C-12 Engines.
38. The bolted connection between the flywheel houses and the engine block for the Caterpillar 3176, C-10 and C-12 engine models.
39. The bolted connection between the flywheel houses and the transmission for the Caterpillar 3176, C-10 and C-12 engine models.
40. The structural analysis of the flywheel houses, including but not limited to any finite element analyses, for the Caterpillar 3176, C-10 and C-12 engine models.
41. The structural analysis of the flywheel house bolts, including but not limited to any finite element analyses, for the Caterpillar 3176, C-10 and C-12 engine models.
42. The loads transferred to the engine block and flywheel houses for the Caterpillar 3176, C-10 and C-12 engine models.

43. The supports between the flywheel houses and the frames for the Caterpillar 3176, C-10 and C-12 engine models.
44. The engine block material and the flywheel house casting and material for the Caterpillar 3176, C-10 and C-12 engine models.
45. The fasteners or bolts used to connect the flywheel houses to the engine blocks for Caterpillar 3176, C-10 and C-12 engine models.
46. Ratings (including but not limited to horse-power, torque and RPM) for the Caterpillar 3176, C-10 and C-12 engine models for the years that they have been in service.

SCHEDULE B

The following terms used in this Schedule B have the following meanings:

1. The term “communication” is defined pursuant to Local Rule 26.5(C)(1) as “the transmittal of information (in the form of facts, ideas, inquiries, or otherwise).”
2. The term “concerning” is defined pursuant to Local Rule 26.5(C)(7) as “referring to, describing, evidencing, or constituting.”
3. The term “document” is defined pursuant to Local Rule 26.5(C)(2) as “writings, drawings, graphs, charts, photographs, phonorecords, and other data compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form[.]”
4. The phrase “Trans-Spec’s C-12 Engines” refers to the twenty-two Caterpillar C-12 engines at issue in this lawsuit and which have the following Engine Numbers: 2KS27780; 2KS27897; 2KS27878; 2KS27936; 2KS27904; 2KS27955; 2KS28378; 2KS27844; 2KS27905; 2KS27999; 2KS27877; 2KS28368; 2KS27861; 2KS27956; 2KS27857; 2KS28276; 2KS27914; 2KS27953; 2KS27893; 2KS27931; 2KS27835; 2KS27791.
5. The phrase “Trans-Spec’s Trucks” refers to the twenty-two trucks containing Caterpillar C-12 engines with the Engine Numbers given in the preceding paragraph.
6. The term “Trans-Spec” shall mean Trans-Spec Truck Service, Inc. d/b/a Truck Service and/or its agents, employees, officers and all other persons acting on its behalf.
7. The term “Caterpillar” shall mean Caterpillar, Inc. and/or its agents, employees, officers and all other persons acting on its behalf.
8. The term “SMI” shall mean Milton Cat f/k/a Southworth-Milton, Inc. and/or its agents, employees, officers and all other persons acting on its behalf.

DOCUMENTS TO BE PRODUCED

The following documents shall be produced at the offices of Donovan Hatem LLP, Two Seaport Lane, Boston, Massachusetts 02210 on or before August 29, 2005:

1. All documents concerning engineering calculations and/or reports concerning the bolted connection between the flywheel housing and the engine block for the Caterpillar engine models 3176, C-10, and C-12.
2. All documents concerning engineering calculations and/or reports concerning the bolted connection between the flywheel housing and the transmission for the Caterpillar engine models 3176, C-10 and C-12.
3. All documents concerning engineering calculations and/or reports concerning the structural analysis of the flywheel housing, including but not limited to any finite element analyses, for the Caterpillar engine models 3176, C-10 and C-12.
4. All documents concerning engineering calculations and/or reports concerning the structural analysis of the flywheel house bolts, including but not limited to any finite elements analyses, for the Caterpillar engine models 3176, C-12, and C-12.
5. All documents concerning engineering calculations and/or reports concerning the loads transferred to the engine block and flywheel houses for the Caterpillar engine models 3176, C-10 and C-12.
6. All documents concerning engineering calculations and/or reports concerning the supports between the flywheel housing and the frame for the Caterpillar engine models 3176, C-10 and C-12.
7. All documents concerning specifications for the engine block material and the flywheel housing casting and material for the Caterpillar engine models 3176, C-10 and C-12.
8. All documents concerning specifications for the fasteners or bolts used to connect the flywheel housing to the engine block for Caterpillar engine models 3176, C-10 and C-12.
9. All documents concerning ratings (including but not limited to horse-power, torque and RPM) for the Caterpillar engine models 3176, C-10 and C-12 for the years that they have been in service.
10. All documents concerning the bolt structure and placement on flywheel houses in Caterpillar engine models 3176, C-10, and C-12.

11. All documents concerning technical and/or shop manuals, including but not limited to those containing information regarding the removal, installation, replacement and/or repair of the flywheel housings, for the Caterpillar engine models 3176, C-10 and C-12.
12. All documents concerning parts lists, including identification numbers, for the flywheel housing and flywheel housing fasteners or bolts for the Caterpillar engine models 3176, C-10 and C-12 for the years that they have been in service.
13. All documents authored by, received by, or carbon copied by anyone in Caterpillar's Warranty Claim department concerning Trans-Spec's Trucks and/or Trans-Spec's C-12 Engines.
14. All documents authored by, received by, or carbon copied to Clarissa Colmer, Robert Smith, and/or Michael Powers concerning Trans-Spec's Trucks and/or Trans-Spec's C-12 Engines.
15. All documents concerning Caterpillar's rejection of warranty claims made by Trans-Spec and/or any entity performing repairs on Trans-Spec's Trucks and/or Trans-Spec's C-12 Engines.
16. All documents concerning Caterpillar's handling of all warranty claims made by Trans-Spec and/or any entity performing repairs on Trans-Spec's Trucks and/or Trans-Spec's C-12 Engines.
17. All communications between SMI and Caterpillar concerning Trans-Spec's Trucks and/or Trans-Spec's C-12 Engines.
18. All communications between Sterling and Caterpillar concerning Trans-Spec's Trucks and/or Trans-Spec's C-12 Engines.
19. All documents concerning the failures of Trans-Spec's C-12 Engines.
20. All documents concerning any investigation by Caterpillar into the causes of the failures of the flywheel houses and flywheel house bolts installed in Trans-Spec's C-12 Engines.
21. All documents concerning any investigation by Caterpillar into the causes of failures of flywheel houses and flywheel house bolts in Caterpillar C-12 model engines.
22. All documents concerning any complaints received by Caterpillar from any person or entity concerning failures of flywheel houses or flywheel house bolts in Caterpillar C-12 model engines.
23. All documents concerning any differences between the design, composition, and/or manufacture of flywheel houses and/or flywheel house bolts installed in Caterpillar

C-12 model engines installed in military vehicle applications and commercial vehicle applications.

24. All documents concerning the circumstances in which the flywheel houses and flywheel house bolts on Caterpillar C-12 model engines are cast or fabricated of the same metal.
25. All documents concerning any modifications in the composition of the flywheel houses and flywheel houses bolts installed in Caterpillar C-12 model engines since January 1, 1996.
26. All documents concerning revisions, changes, or modifications of any kind in the design of the flywheel houses or flywheel house bolts used in Caterpillar C-12 model engines since January 1, 1996.
27. All documents concerning the impact or effect of transmissions and/or transmission mounts on the Caterpillar C-12 model engines, including but not limited to their impact or effect on flywheel houses or flywheel house bolts.
28. All documents concerning any tests performed on Trans-Spec's Trucks and/or Trans-Spec's C-12 Engines.

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